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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/415,467	10/08/1999	MYRON J. BRUDNICKI	050-98-021	4865

7590 11/19/2003

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EXAMINER

MERCADO, JULIAN A

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 11/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

2013

Advisory Action

Application No.

09/415,467

Applicant(s)

BRUDNICKI, MYRON J.

Examiner

Julian A. Mercado

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11-4-03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☒ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 5 and 8.

Claim(s) rejected: 1-4, 6, 7 and 9.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____.

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The proposed amendment to claim 6 raises the new issue of the ports now claimed at the “top and bottom sides” of the fuel cells from the previously claimed “opposing sides”.

New claims 23 and 24 are submitted without cancellation of a corresponding number of *finally* rejected claims [emphasis added], although it is noted that applicant has proposed to cancel claims 10-22 which had been withdrawn from consideration.

With respect to arguments against Gardner et al., applicant submits that Gardner et al. does not teach a top and bottom port, “[n]o use of anything that can be considered a top or a bottom port of a fuel cell or a plurality of fuel cells appears to be shown in the reference” and that “Gardiner [sic] appears to show a perpendicular distribution system so as to supply each module with the first or second reactant in a largely unidirectional fashion”. In reply, to the extent that Gardner et al.’s distribution system may be characterized as “perpendicular”, the top and bottom ports of the fuel cell which would naturally fall along the vertical portion of such a perpendicular distribution system are maintained to be in contact with the manifolds [14] of the receptacle, especially in view of the manifolds being disposed horizontally. (see cross-sectional view of Figure 1) Additionally, the examiner notes that the scope of independent claim 1 (as previously presented) merely recites that the top and bottom *sides* of the fuel cells are in direct contact with the receptacle and not a top and bottom *port* as applicant appears to assert is within the scope of the claim. As noted above, the proposed amendment to independent claim 6 raises new issues for the arguably claimed top and bottom ports.

Should applicant decide to further prosecute this application and if applicant intends to recite the scope independent claim 1 consistent with the proposed amendment to independent

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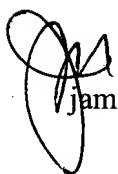
claim 6, it is suggested to replace "top and bottom sides and ports" (lines 4-5) with --top and bottom sides with respective ports-- and replace "the top and bottom sides" (line 7) with --top and bottom ports--.

Conclusion

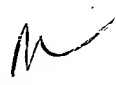
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian A. Mercado whose telephone number is (703) 305-0511. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (703) 308-2383. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam



Patrick Ryan
Supervisory Patent Examiner
Technology Center 1700